



BETTIS ASPHALT & CONSTRUCTION

Quote Terms and Conditions:

- This quote & agreement is by and between Bettis Asphalt & Construction, Inc. (“Seller”) and (“Buyer”). Parties agree and understand that each and every printed term hereupon is made part of and fully incorporated into this agreement. All sales are subject to and expressly conditioned upon the acceptance of the terms and conditions contained herein. Seller hereby agrees to sell and Buyer hereby agrees to purchase from Seller the goods described in this agreement. The terms, conditions, and agreements found in this quote shall be binding upon both Buyer’s and Seller’s successors and assigns.
- Seller’s acceptance of this agreement is expressly limited to, and expressly made conditional on, Buyer’s acceptance of these terms and conditions. Seller objects to any different or additional terms.
- Seller’s duty to perform, and Buyer’s right to purchase, hereunder is at all times subject to approval, and continuing approval, by Seller of Buyer’s credit worthiness. Seller, without limitation, reserves the right to sell at any time on pre-paid, COD or standby letter of credit, or other secured or collaterally assured basis acceptable to Seller.
- All products and services itemized on this quotation are tied.
- All prices are in U.S. tons, 2,000 pounds per ton, to be determined by certified scales.
- This contract must be accepted in writing and returned to Bettis Asphalt & Construction Inc. (BACI) on or before the expiration date as provided on page 1.
- Both parties agree to keep confidential the terms of this agreement unless such terms have been disclosed publicly other than through a breach by either party of this section.
- Purchaser accepts the terms and conditions of this quote by;
 - i) signing this quote (by hand or electronically),
 - ii) accepting the product by either delivery or picking up the product at the plant by itself, BACI, or by a third party, or
 - iii) making any payment for the product.
- Normal operating hours are 7:00AM – 4:30PM, Monday through Friday. Any asphalt sold outside of these operating hours may incur additional charges.
- Please contact plant operator a minimum of three (3) days prior to planned purchase. If no scheduling is provided, BACI cannot guarantee asphalt will be available and sold.
- Customers on account shall pay all invoiced amounts within thirty (30) days from date of invoice. Purchaser shall pay interest on all late payments at the rate of 1.5% per month. Purchaser shall reimburse seller for all costs incurred in collecting late payments, including, without limitation, attorneys’ fees. Purchaser shall not withhold payment of any amounts due and payable hereunder by reason of any set-off of any claim or dispute with seller.
- Customers not on account shall make payment at point of purchase or contact the corporate office (785.235.8444) to get a BACI customer account set up.
- Final invoice amount to any purchaser will be based on unit prices multiplied by ticketed tonnage at the plant plus any other quoted fees, rates, and taxes.
- Prices shall increase 5% annually from quote date.
- Prices subject to a \$3.00 per ton price increase if order quantity is exceeded by more than 10 percent.
- Pricing quoted is based on current liquid asphalt index prices and subject to change based on the KDOT asphalt index. The current KDOT asphalt index can be found at:
<https://www.ksdot.org/bureaus/burconsmain/ppreq/AsphaltPriceIndex.asp>.
- Pricing will be adjusted monthly when KDOT releases the index for the month.
- All indexing will be based off a theoretical 5% added liquid asphalt content, unless stated otherwise.
- Sales tax will be charged to all partial and final invoices unless a project tax exemption certificate is furnished prior to sale. Failure to provide a project tax exemption certificate will result in sales tax being applied on materials. BACI will not remove any sales tax charges after material has been delivered to a job site.
- All sales will be assessed a Plant Production Energy Surcharge (PPSC) per ton of hot mix sold. This will be calculated and adjusted monthly then added to any invoices. The PPSC can be calculated by using an index factor of .45 (45/100) multiplied by the most recent full months Midwest Diesel (On-Highway) – All Types diesel price at the time of invoice. This can be found at https://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_r20_m.htm.
- Commercial HMA mixes may utilize recycled asphalt pavement (RAP) and/or recycled asphalt shingles (RAS). It is the customer’s responsibility to verify that quotes mixes are satisfactory for use on their project.

- Quotes are based on current mix designs; the current mix designs can be supplied upon request. If mix designs change or a new mix design is requested, BACI reserves the right to change pricing to reflect any changes or modifications to the original mix design quoted.
- Any quality assurance testing is performed for BACI's own use. All costs incurred in HMA testing, including by a third party, requested by the customer will be at customer's expense. BACI offers no material warranties, express or implied. BACI will not accept any pay factor deductions for any material provided. All other warranties of Seller and all representations, guarantees, instructions, promises, descriptions and samples of or pertaining to, product quality, composition, characteristics, environmental or human safety or hazard or health affects, performance or like matters are specifically excluded. Seller's warranties under this agreement shall not be effective if Seller has determined, in its sole discretion, that Buyer has misused the goods in any manner. Buyer warrants that it will properly test and inspect the goods prior to use in accordance with all federal, state, and local laws, rules, regulations, orders, as well as any applicable industry and contractual standard.
- BACI can provide material delivery when available. BACI has various independent trucking companies that haul material to project locations. Truck delivery must be coordinated three (3) days prior to delivery. By assisting customers with delivery, BACI does not guarantee truck availability, product delivery rate, or the quantity of product. Any delivery dates provided by BACI are non-binding and time of delivery is NOT of the essence. BACI shall not be liable for any delays, loss, or damage in transit. BACI reserves the right to allocate supply, to the extent such allocation is deemed necessary by BACI, among any or all purchasers (including BACI affiliated companies) at its sole discretion, without liability for failure of performance which may result therefrom. Additional fuel surcharges may apply.
- Truck wait time at the job site shall be limited to twenty (20) minutes. Wait time after this period shall be invoiced at current truck rates per truck billed in 15-minute increments.
- Millings will be accepted at the plant at the discretion of the plant operator based on available space and quality of the incoming recycled pavement.
- Buyer's sole and exclusive remedy under this agreement, with respect to defects in the goods sold, shall be repair or replacement of said goods without charge or refund to Buyer, unless said repair or replacement would be economically wasteful under the circumstances, in which event Seller, at its sole option, shall compensate Buyer for the diminished value of the goods sold. The Seller's obligation to repair or replace defective goods (or, at its election, compensate the Buyer for the diminished value of the goods sold) provides the sole and exclusive remedy to, and provides the sole and exclusive damages of, Buyer for any cause of action asserted against Seller arising out of or relating to the sale of the goods, whether Buyer seeks to recover from Seller under the theories of breach of contract, warranty, tort, or any other theory. Seller will not be responsible, or held liable for, any costs associated with removal or re-installation of the goods. Furthermore, Seller shall not, in any event, be liable for incidental, consequential or special damages of any kind resulting from any use or failure of the goods sold. Such waiver includes, but is not limited to, damages incurred by the Buyer for lost profits, income, business reputation losses, or loss in business efficiency. Any and all claims under this agreement must be brought within one three (3) months of delivery of the goods.
- Immediately upon Seller's delivery of the goods, Buyer shall inspect the same and notify Seller in writing of any claims of defect or shortages. Buyer's failure to so notify Seller within five (5) business days of delivery of the goods shall constitute a waiver of any claim for damages concerning the goods and shall conclusively be deemed to conform to the terms and conditions of this agreement and shall be irrevocably accepted by the Buyer.
- Buyer expressly accepts responsibility for, and hereby assumes all risk for, all sales, re-sales, or other transfers, uses or misuses of the goods by Buyer, or by any other third party in which Buyer is associated or which has purchased the goods from Buyer. Buyer expressly indemnifies and holds harmless the Seller in any suit, claim, or demand by any third party against Seller which relates to the performance, quality, or characteristics of the goods sold under a theory of breach of contract, breach of warranty, negligence, strict liability, or any other tort.
- Seller reserves the right to cancel, or suspend, all or any part of this agreement if Buyer does not make payments as specified in this agreement, or if Buyer breaches any terms hereof. In such an event, Buyer shall pay all damages associated with said cancellation including but not limited to shipment, storage, production, cancellation costs imposed by Seller's suppliers, and any other cost resulting from Buyer's cancellation. The amount of such damages shall be certified by Seller's certified public accountants and shall be conclusive as to the amount owed to Seller. Seller reserves the right to require at any time prior to transfer of title of the goods any written assurances or evidence necessary to assure Seller of Buyer's ability to perform its obligations under this agreement. If Buyer fails to timely provide such assurances, Seller reserves the right to suspend its performance until Buyer makes payment in full in advance of any other shipment of the items described in this agreement. Any such demand by Seller may be made in writing or orally. Any suspension or termination action taken by the Seller under this agreement shall not constitute a waiver of, and shall not prejudice, any other remedy afforded to Seller under the law.
- Buyer's delay in exercising or failure to exercise any right, power or privilege under this agreement shall not operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof.
- Buyer may not, without the express written consent of Seller, either assign or delegate any of its rights, duties, or obligations under this agreement. Any purported assignment or delegation, without said express written consent, of Buyer's rights, duties, or obligations are void and any purported assignee shall acquire no rights, duties, or obligations under this agreement.

- Buyer agrees to indemnify, hold harmless, and defend Seller, its employees, agents, officers, insurers, sureties, and corporate affiliates from any and all claims, suits, demands, liabilities, costs and expenses that Seller may incur or have brought by Buyer's employees, agents, officers, corporate affiliates, insurers, sureties, customers, or any other individual or entity not a party to this agreement arising out of, directly or indirectly, the use, misuse, quality, or characteristics of the goods, Buyer's handling, shipment, or transportation of the goods, any liability for environmental violations or consumer health or safety violations, or Buyer's failure to perform its obligations under this agreement. If any of Buyer's employees visit any property owned or occupied by Seller, Buyer shall be solely responsible for the safety and welfare of those employees; and Buyer shall defend and indemnify Seller from any claims against Seller by Buyer's employees on account of injuries alleged to have been suffered on any said property.
- If Buyer loads, unloads or ships any hazardous material as defined by any federal, Kansas, or local law, regulation, rule, statute, resolution, or ordinance pursuant to this agreement, Buyer hereby warrants that all hazardous materials shall be prepared for shipment, loaded, shipped and unloaded in compliance with all applicable federal, Kansas, or local laws, regulations, rules, statutes, resolutions, or ordinances regarding the handling and transportation of hazardous materials and Buyer shall indemnify, defend, and hold Seller harmless from any and all liability, of whatever nature, to which Seller may become subject as a result of Buyer's failure to comply therewith.
- This instrument constitutes the entire agreement between the parties with respect to this agreement and goods delivered pursuant thereto. No amendment, alteration, modification, or waiver of this agreement subsequent to the date hereof shall be valid or enforceable unless in writing and signed by an authorized representative of the party sought to be charged, and no prior or current course of dealing between the parties, or any usage of trade or custom of the industry shall modify or supplement this agreement.
- The Equal Employment Opportunity clause of Section 202 of Executive Order 11246, the implementing rules and regulations of the Office of Federal Contract Compliance, and all other state, local or federal laws which by law or government contract or subcontract with Seller or its affiliates, parent or subsidiary companies have to be a part of this agreement are incorporated herein by reference; and Buyer agrees to comply therewith to the extent required by law or Seller's commitments to any governmental agency or governmental contractor.
- This agreement shall be governed, construed, and interpreted according to the laws of Kansas. Any claim, disagreement, dispute or litigation shall be subject to the exclusive jurisdiction of the state courts located in Kansas. The Parties expressly agree that this Agreement was jointly drafted, and that they had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms before execution. This Agreement shall be construed neither against nor in favor of either Party but shall be construed in a neutral manner.
- Seller shall not be liable for any loss, damage, expense, or claim as a result of any delay or failure to deliver, or otherwise perform hereunder, if such delay or failure is caused by any event outside of the Seller's control, including, but not limited to: Acts of the Buyer, embargos, governmental actions, regulation affecting the Seller's business, fire, flood, explosion, tornado, theft, riots, pandemic, epidemic, disease, acts of War, energy price fluctuations by more than 30%, labor strikes, or other labor difficulties. Furthermore, if one of the aforementioned events makes Seller's performance under this agreement substantially impracticable, Seller may terminate this agreement, without liability to Buyer, and shall be compensated for the amount of actual goods sold up to the date of the event.